

ENTERED

March 13, 2024

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

JOHN D PELKO,

Plaintiff,

VS.

DAVID STITH, *et al.*,

Defendants.

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CIVIL ACTION NO. 2:23-CV-00296

**ORDER ADOPTING MEMORANDUM
AND RECOMMENDATION TO DISMISS CASE**

On February 8, 2024, United States Magistrate Judge Julie K. Hampton issued her “Memorandum and Recommendation to Dismiss Case” (D.E. 31). Plaintiff was provided proper notice of, and opportunity to object to, the Magistrate Judge’s memorandum and recommendation. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1); General Order No. 2002-13. No objections have been timely filed.

When no timely objection to a magistrate judge’s memorandum and recommendation is filed, the district court need only satisfy itself that there is no clear error on the face of the record and accept the magistrate judge’s memorandum and recommendation. *Guillory v. PPG Indus., Inc.*, 434 F.3d 303, 308 (5th Cir. 2005) (citing *Douglass v. United Servs. Auto Ass’n*, 79 F.3d 1415, 1420 (5th Cir. 1996)).

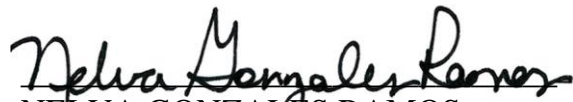
Having reviewed the findings of fact and conclusions of law set forth in the Magistrate Judge’s memorandum and recommendation (D.E. 31), and all other relevant

documents in the record, and finding no clear error, the Court **ADOPTS** as its own the findings and conclusions of the Magistrate Judge. Accordingly,

- Plaintiff's Fourth Amendment malicious prosecution claims against Sheriff Hooper are **DISMISSED WITHOUT PREJUDICE**;
- Plaintiff's various claims against Judge Stith, Assistant District Attorney Reyes, and Sheriff Hooper – in connection with challenging the validity of his conviction and 20-year sentence in Case No. 21-FC-1523G – are **DISMISSED WITH PREJUDICE** as frivolous until such time as Plaintiff satisfies the conditions set forth in *Heck v. Humphrey*, 512 U.S. 477 (1994); and
- Plaintiff's remaining claims against Defendants are **DISMISSED WITH PREJUDICE** as frivolous, for failure to state a claim for relief, or on immunity grounds.

The Court further **ORDERS** that this dismissal counts as a “**STRIKE**” for purposes of 28 U.S.C. § 1915(g), and **INSTRUCTS** the Clerk of Court to send notice of this dismissal to the Manager of the Three Strikes List for the Southern District of Texas at Three_Strikes@txs.uscourts.gov.

ORDERED on March 13, 2024.


NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE